

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 22, 2001

STATE OF TENNESSEE v. JIMMY D. GOODE

Appeal from the Criminal Court for Sullivan County
No. S42797 R. Jerry Beck, Judge

No. E2000-02829-CCA-R3-CD
November 19, 2001

The defendant, Jimmy D. Goode, pled guilty to one count of operating a motor vehicle in violation of the Motor Vehicle Habitual Offenders Act. See Tenn. Code Ann. § 55-10-616. The trial court sentenced the defendant as a Range I offender to one year in the Department of Correction. In this appeal of right, the defendant asserts that because he had driven the vehicle due to an emergency, the trial court should have suspended his sentence pursuant to Tennessee Code Annotated section 55-10-616(c). Because the trial court erroneously determined that section 55-10-616(c) was inapplicable, the sentence imposed is set aside and the cause remanded for a new sentencing hearing.

Tenn. R. App. P. 3; Judgment of the Trial Court Reversed and Remanded

GARY R. WADE, P.J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ALAN E. GLENN, JJ., joined.

Thomas McKinney, Jr., Kingsport, Tennessee, for the appellant, Jimmy D. Goode.

Paul G. Summers, Attorney General & Reporter; Elizabeth B. Marney, Assistant Attorney General; and Todd Martin and James Goodwin, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

On January 21, 1999, Tennessee Highway Patrol officers, while conducting a driver's license check in Blountville, stopped a 1999 Pontiac Sunfire operated by the defendant, who, almost three years earlier, had been declared a habitual motor vehicle offender. Upon his indictment, the defendant entered a plea of guilt to violation of the Motor Vehicle Habitual Offenders Act. The trial court imposed a sentence of one year, reserved the issue of alternative sentencing, and ordered a fine in the amount of \$250.00.

At the sentencing hearing, the defendant testified that on the day of the offense, his fiancée, Rhonda Goode (to whom he was married by the time of the hearing), had received a medical

prescription from her physician. He claimed that his fiancée took some of the medication while at the doctor's office, but was able to drive her rental car to a garage where her van was being repaired. The defendant testified that because the van needed an alternator, Ms. Goode then drove to a junkyard in Blountville where they had located a used one. The defendant explained that after arriving at the junkyard, his fiancée became ill. According to the defendant, his fiancée vomited twice and, ultimately, fainted. He claimed that he had "ended up putting her in the car" and that he was attempting to drive her to the hospital when stopped by the THP. The defendant testified that his fiancée vomited again in the presence of one of the officers.

The defendant, an hourly employee at Davis Electric, lives with his wife, whom he married in December 1999, and her 13-year-old son. He testified that because his wife is unable to work, his income is essential to support the household. The defendant stated that his brother, who also works at Davis Electric, provides him with transportation to and from work. While acknowledging that he had eight prior traffic offenses, the last of which was in 1996, the defendant claimed that he did not otherwise have any prior criminal record. Jeffrey Lynn Goode, the defendant's brother, testified that he had been driving the defendant to and from work and promised to continue to do so in the future.

Rhonda Goode testified that she has several chronic illnesses, including fibromyalgia, chronic obstructive pulmonary disease, mitral valve prolapse, and panic and anxiety disorder. Ms. Goode also provided a listing of her prescribed medications and stated that she was unable to maintain employment. She confirmed the defendant's account of the circumstances surrounding the offense, recalling that the medication she had taken that morning was a new "stronger muscle relaxer." She acknowledged, however, that the junkyard probably had a business phone that the defendant could have used and that an ambulance could have been an alternative means of transportation to the hospital. Ms. Goode testified that the defendant "takes good care of [her] and [her] son."

At the conclusion of the hearing, the trial court observed that an emergency could qualify as a defense to a charge of operating a motor vehicle in violation of the Motor Vehicle Habitual Offenders Act. It determined, however, that emergency circumstances could not be considered on the issue of alternative sentencing:

[T]hat is a defense to HTO in a proper case, if they're on an emergency route. But that's ordinarily introduced in the context of a trial on a plea of not guilty, alleging that type of situation. In this case the defendant has pled guilty, and the court presumes he is guilty

The trial court then determined that the defendant was not entitled to probation due to his prior convictions and because a previous sentence of probation had been revoked.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a de novo review with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all

relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991); see State v. Jones, 883 S.W.2d 597, 600 (Tenn. 1994). "If the trial court applies inappropriate factors or otherwise fails to follow the 1989 Sentencing Act, the presumption of correctness falls." State v. Shelton, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992). The Sentencing Commission Comments provide that the burden is on the defendant to show the impropriety of the sentence. Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments.

Tennessee Code Annotated section 55-10-616 provides in pertinent part as follows:

The court has no power to suspend any . . . sentence or fine [for a conviction for driving in violation of the Motor Vehicle Habitual Offenders Act], except that in cases where such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, the sentence or any part thereof or fine or any part thereof may be suspended by the court, in its discretion.

Tenn. Code Ann. § 55-10-616(c).

In our view, Tennessee Code Annotated section 55-10-616(c) plainly authorizes a trial court to consider emergency circumstances at the time of sentencing. Under that section, a trial court may suspend in whole or in part the sentence of a defendant convicted for violating the Motor Vehicle Habitual Offenders Act where driving was necessitated by "extreme emergency." In fact, the statute specifies that the only time the trial court may suspend a sentence for violation of the Act is in the event of an emergency. See id.; Cox v. State, 53 S.W.3d 287, 295 (Tenn. Crim. App. 2001). The decision to grant probation, even upon a finding of "extreme emergency," ultimately lies within the discretion of the trial court. Tenn. Code Ann. § 55-10-616(c).

Because the trial court erroneously concluded that an emergency could not be considered in the imposition of the sentence, the judgment is reversed. The cause is remanded to the trial court for reconsideration on the issue of alternative sentencing.

GARY R. WADE, PRESIDING JUDGE